



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202 - 2733

APR 27 2015

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7014 0150 0000 2454 9727

Mr. Paul Bork
Operations Legal
The DOW Chemical Company
2030 Building
Midland, MI 58674

RE: In the Matter of The DOW Chemical Company
Freeport, TX
Docket No. CAA-06-2015-3329

Dear Mr. Bork,

Enclosed is a final Consent Agreement and Final Order (CAFO) that has been filed with the Region 6 Regional Hearing Clerk and is now effective. As provided in the CAFO, The Dow Chemical Company shall have thirty (30) days from the effective date of the CAFO to pay the civil penalty of \$32,500.00.

If you have any questions regarding this CAFO, please contact Jeffrey Clay, Assistant Regional Counsel, at (214) 665-7297.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

2015 APR 29 AM 10:50
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

The DOW Chemical Company,

Respondent

Freeport, Texas

)
) EPA DOCKET NO. CAA-06-2015-3329
)
)

)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
)

CONSENT AGREEMENT AND FINAL ORDER

1. The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 ("EPA") ("Complainant"), and The DOW Chemical Company located in Freeport, Texas ("Respondent" or "DOW"), in the above referenced action, have agreed to simultaneously commence and resolve this matter, through issuance of this Consent Agreement and Final Order ("CAFO"). This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (CAA or the Act), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for the violations and facts alleged in the CAFO.

6. Respondent consents to the issuance of this CAFO, and consents to the assessment and payment of the stated federal civil monetary penalty in the amount and by the method set out in this CAFO.

7. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

8. Nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, and criminal authorities, or that of other Federal, state, or local agencies or departments to obtain penalties or injunctive relief under Federal, state, or local laws or regulations.

9. Respondent represents that the undersigned representative is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

10. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

11. Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

12. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements for various regulated facilities depending on the threat the facilities pose to surrounding communities.

13. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Act.

14. Under 40 CFR § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process ("Covered Process"), as determined under 40 CFR § 68.115, shall comply with the requirements of 40 CFR Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

15. Under 40 CFR § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan ("RMP") as provided in 40 CFR Part 68 Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

16. 40 CFR Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three "Programs" -- Program 1, Program 2, and Program 3.

17. Under 40 CFR § 68.12(d), the owner or operator of a stationary source with a process subject to the "Program 3" requirements of the Part 68 regulations, as determined pursuant to 40 CFR § 68.10(d), must comply with the chemical accident prevention requirements

of 40 CFR Part 68, Subpart D (Program 3 Prevention Program, at 40 CFR §§ 68.65-68.87).

18. Pursuant to 40 C.F.R. § 68.69(a) an owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information.

19. Under Sections §§ 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the Clean Air Act including, but not limited to, a requirement or prohibition of any rule promulgated under the Clean Air Act, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the Clean Air Act, 42 U.S.C. § 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty.

20. As adjusted by the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 CFR § 19.4, the Administrator may assess a civil penalty of up to \$37,500 per day of violation for a violation occurring after January 12, 2009.

21. "Covered process" is defined in 40 CFR § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

22. "Person" is defined in Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

23. "Process" is defined in 40 CFR § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of

vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

24. "Regulated substance" is defined in 40 CFR § 68.3 as any substance listed pursuant to Section 112(r)(3) of the Clean Air Act as amended, in § 68.130.

25. "RMP" is defined in 40 CFR § 68.3 as the risk management plan required under subpart G of 40 CFR Part 68.

26. "Stationary source" is defined in Section 112(r)(2)(C) of the Clean Air Act and 40 CFR § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

27. "Threshold quantity" is defined in 40 CFR § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Clean Air Act as amended; listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.

28. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. Respondent is incorporated and authorized to do business in the state of Texas.

30. Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

31. At all times relevant to this CAFO, Respondent owned and operated a chemical manufacturing facility located at 2301 N. Brazosport Boulevard, Freeport, Texas 77541 ("Facility").

32. On May 31, 2014, there was a release from floating roof storage tank V-1901.

33. The roof of the external floating roof tank tilted due to the weight of rainwater water collecting on top of the tank and weighing down one side, which allowed substances from inside the tank, such as propane, to escape.

34. The event occurred at one of the Naptha storage tanks for the Light Hydrocarbon 8 facility, which cracks Naptha to make ethylene.

35. Propane is identified at 40 C.F.R. Part 68.130 as a flammable regulated substance with a threshold quantity of 10,000 pounds.

36. Respondent produces, stores, or handles a regulated substance, propane, in an amount over the threshold quantity of 10,000 pounds in a process unit.

37. Based on the quantity of regulated substances present at the facility, the facility's NAIC code, and an evaluation of off-site receptors, the covered processes at Respondent's facility are subject to Program 3 of the RMP regulations.

38. The Light Hydrocarbon 8 facility is a covered process subject to RMP Program 3 requirements.

39. The Program 3 requirements include, but are not limited to, the development and implementation of written operating procedures that provide clear instructions for safely conducting activities involved in each covered process.

40. Respondent has a Standard Operating Procedure "V-1101A/B & V-1901 Roof Water Draining" that addresses situations where rainwater has accumulated on the roofs of tanks at the facility.

41. According to the SOP a technician should go out, once the rain has stopped, to the South Tank Farm to visually inspect that the rain has been drained off of the roof of the

tanks. Once the roof is confirmed to be drained, the technician should manually shut the drain valve by setting OK.

42. The technician failed to implement the SOP on May 31, 2014.

43. As a result of the technician's failure to follow the applicable SOP, rainwater accumulated on the roof of tank V-1901 and substances within the tank were released.

44. The Facility failed to follow an operating procedure required by 40 C.F.R. § 68.69(a)(1)(iii).

IV. VIOLATIONS

45. On May 31, 2014, Respondent failed to follow operating procedures involving draining rainwater from tank roofs.

46. Due to the procedure not being followed water accumulated on the tank roof of V-1901, which then partially collapsed and allowed regulated substances to be released, which is a violation of 40 C.F.R § 68.69(a)(1)(iii).

V. CORRECTIVE MEASURES

47. Following the incident, the respondent conducted a thorough root cause analysis to identify the primary and contributing causes of the incident. As a result, actions were taken to prevent the reoccurrence of the incident.

48. An update of the procedure for inspecting the floating roof tanks for water accumulation and confirming the functionality of the drain systems based on what was learned during the May 31, 2014 incident was completed on June 30, 2014.

49. Also, the Respondent installed temporary full-port gate drain valves on all floating roof tanks on July 24, 2014; permanent valves were installed on February 18, 2015.

VI. CIVIL PENALTY AND TERMS OF SETTLEMENT

50. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), which authorizes EPA to assess a civil penalty of up to twenty-five thousand dollars (\$25,000) per day for each violation of the CAA.¹

51. Upon consideration of the entire record herein, including the Respondent's willingness to take measures to prevent a recurrence of the above described incident, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, the parties agree that \$32,500 is an appropriate penalty to resolve this matter.

52. Within thirty (30) days of this fully executed CAFO, Respondent shall pay \$32,500 by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving US currency; or On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

¹ The Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 provides for increases in the statutory penalty provisions (\$25,000) cited in the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 (CAA Penalty Policy). It provides for up to \$25,000 per day of violation for violations occurring on or before January 30, 1997; up to \$27,500 per day for each violation occurring after January 30, 1997 through March 15, 2004; up to \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009.

IN THE MATTER OF THE DOW CHEMICAL COMPANY
EPA DOCKET NUMBER CAA-06-2015-3329

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. FedEx), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact – Jesse White (301) 887-6548

For On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in search field
Open form and complete required fields.

IN THE MATTER OF THE DOW CHEMICAL COMPANY
EPA DOCKET NUMBER CAA-06-2015-3329

PLEASE

NOTE:

The docket number CAA 06-2015-3329 shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Carlos Flores
Enforcement Officer (6EN-AT)
Toxics Enforcement Section
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue Suite 1200
Dallas, Texas 75202-2733;

Lorena Vaughn
Region 6 Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

53. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

54. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

55. EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

56. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten (10) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

57. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in

this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

58. This document constitutes a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

VIII. RETENTION OF ENFORCEMENT RIGHTS

59. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or State laws, regulations, statutes, or permitting programs.

60. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

61. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, or criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws, regulations, or subparts thereof.

IX. COSTS

62. Each party shall bear its own costs and attorney's fees.

IN THE MATTER OF THE DOW CHEMICAL COMPANY
EPA DOCKET NUMBER CAA-06-2015-3329

IT IS SO AGREED:

FOR THE RESPONDENT:

Date: 4-15-15

JR Falcon
Environmental Permitting & Compliance
The Dow Chemical Co. Leader
Freeport, TX

FOR THE COMPLAINANT:

Date: 4.27.15

John Blevins
John Blevins
Director
Compliance Assurance and
Enforcement Division

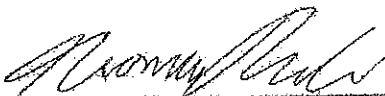
IN THE MATTER OF THE DOW CHEMICAL COMPANY
EPA DOCKET NUMBER CAA-06-2015-3329

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

4/29/15


Regional Judicial Officer
U.S. EPA, Region 6

Thomas Ruck

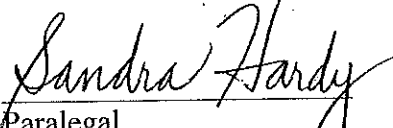
CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2015, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED and ELECTRONIC COPY

7014 0150 0000 2454 9727

Mr. Paul Bork
Operations Legal
The DOW Chemical Company
2030 Building
Midland, MI 58674


Paralegal
U.S. EPA Region 6, Dallas, Texas